

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE MANUEL BIRRUETA,

Defendant.

NO: 2:13-CR-2134-TOR-1

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

BEFORE THE COURT is Defendant's Motion to Reconsider Order Denying Motion for Re-sentence Pursuant to Amendment 782 (ECF No. 145). Defendant submitted this motion on his own behalf. The Court has reviewed the pleadings and the record and is fully informed.

Defendant observes that he was sentenced to the low end of the guideline range for total offense level 33. Application of Amendment 782 would result in a revised total offense level 31. Defendant contends that since he was given a low end sentence for level 33, he should now be given a low end sentence for offense level 31. Defendant's reasoning is misplaced. The Court never held that

1 Defendant deserved a low end sentence no matter the offense level. In fact, the
2 Court held that the 135 month sentence was appropriate, no matter the offense
3 level. The Court stated at sentencing: “[I]f the Court accepted the expected
4 amended drug guideline the total offense level would be 31, CH I with a range of
5 108-135 months which is also a range encompassing the Court’s determination that
6 the 135 month sentence is the appropriate sentence after considering the guidelines
7 and sentencing statute goals and objectives.” ECF No. 115 at 4.

8 Dispositive here, is the Courts alternative sentencing finding that the 135
9 month sentence straddled both the original and soon to be amended guideline
10 calculation and that the 135 month sentence was the appropriate sentence,
11 regardless of which version was used.


12 **IT IS ORDERED:**

13 Defendant’s Motion to Reconsider Order Denying Motion for Re-sentence
14 Pursuant to Amendment 782 (ECF No. 145) is **DENIED**.

15 The District Court Executive is directed to enter this Order and furnish
16 copies to the parties.

17 **DATED** December 23, 2015.




THOMAS O. RICE
United States District Judge